

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Wasserman	Team: Team # 8	CCRB Case #: 200919168	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/11/2009 7:00 PM, Tuesday, 12/15/2009	Location of Incident: § 87(2)(b) 83rd Precinct Station House	Precinct: 83	18 Mo. SOL 6/11/2011	EO SOL 6/11/2011	
Date/Time CV Reported Wed, 12/16/2009 1:26 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 12/16/2009 1:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Meagan Barone	00657	929686	NARCBBN
2. POM Sherlon Smikle	29976	939484	083 PCT
3. POM Matthew Zito	15264	937792	NARCBBN
4. POM Lorne Kanover	25987	936842	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT William Sommer	02586	927538	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Zito	Abuse: On December 11, 2009, PO Matthew Zito entered and searched § 87(2)(b) Brooklyn, NY 11221.	
B.POM Lorne Kanover	Abuse: On December 11, 2009, PO Lorne Kanover entered and searched § 87(2)(b) Brooklyn, NY 11221.	
C.DT3 Meagan Barone	Abuse: On December 11, 2009, DT Meagan Barone frisked § 87(2)(b)	
D.POM Sherlon Smikle	Abuse: On December 15, 2009, PO Sherlon Smikle did not process § 87(2)(b)'s complaint regarding officers.	

## Case Summary

§ 87(2)(b) filed a complaint in-person at the CCRB on December 16, 2009. At about 7:00 p.m. on December 11, 2009, PO Matthew Zito and PO Lorne Kanover from Brooklyn North Narcotics entered the § 87(2)(b) apartment of § 87(2)(b) in Brooklyn and arrested § 87(2)(b) for § 87(2)(b). The following allegations resulted.

**Allegation A—Abuse of Authority:** On December 11, 2009, PO Matthew Zito entered and searched § 87(2)(b).

**Allegation B—Abuse of Authority:** On December 11, 2009, PO Lorne Kanover entered and searched § 87(2)(b).

§ 87(2)(g)

**Allegation C—Abuse of Authority:** On December 11, 2009, DT Meagan Barone frisked § 87(2)(b) § 87(2)(g).

**Allegation D—Abuse of Authority:** On December 15, 2009, PO Sherlon Smikle did not process § 87(2)(b)'s complaint regarding officers. § 87(2)(g)

## Results of Investigation

### Civilian Statements:

#### **Complainant:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black female who is 5'6" tall and weighs 116 pounds. § 87(2)(b) works as § 87(2)(b).

#### **CCRB Testimony**

§ 87(2)(b) was interviewed at the CCRB as a walk-in complainant on December 16, 2009 (encl. 6A-6C). § 87(2)(b) provided a follow-up phone statement on February 9, 2010 (encl. 6K). § 87(2)(g)

On December 11, 2009, at about 7:00 p.m., § 87(2)(b) was in the bedroom of her apartment, located on the § 87(2)(b) of § 87(2)(b) in Brooklyn, with her girlfriend § 87(2)(b). § 87(2)(b) and § 87(2)(b) heard a knock on the door of the locked outer room of the bedroom and § 87(2)(b) went to answer it. § 87(2)(b) did not hear the people at the door say anything and could not see the door of the outer room from her location near the window.

§ 87(2)(b) came back into the inner room of the bedroom with two officers in plainclothes, identified as PO Matthew Zito and PO Lorne Kanover of Brooklyn North Narcotics. § 87(2)(b) asked the officers if they had a search warrant. The officers told § 87(2)(b) that they did not need

a warrant as they were responding to a complaint that she was distributing marijuana and had firearms at her apartment. PO Kanover took § 87(2)(b) into the outer room and patted down the exterior of § 87(2)(b)'s clothing without going into her pockets. PO Kanover then took § 87(2)(b) back into the inner room, rejoining PO Zito and § 87(2)(b).

PO Zito and PO Kanover searched the inner room. They did not ask for consent to search or ask § 87(2)(b) to sign a consent form. PO Zito flipped the mattress over and searched underneath and around § 87(2)(b)'s bed. After he did this, PO Zito looked in the drawers of the armoire near the bed, looked in between the shutters and behind the radiator, looked in various suitcases and bags on the floor of the room and opened up and examined a clear glass box containing sex toys. During this search, the officers found a "roach," or smoked marijuana cigarette, in an ashtray near the window in the bedroom. The officers found this roach following the search of the armoire. This marijuana cigarette did not belong to § 87(2)(b) and § 87(2)(b) did not know who had smoked it, but the roach was not lit or smoldering at the time that the officers were present.

Two additional plainclothes officers arrived at § 87(2)(b)'s apartment, identified as Sgt. William Sommer and Detective Meagan Barone from Brooklyn North Narcotics. Det. Barone took § 87(2)(b) into the outer room of the bedroom and searched § 87(2)(b) thoroughly, patting her down and going into her pants pockets, then handcuffed § 87(2)(b). § 87(2)(b) was led out of her apartment transported to the 83<sup>rd</sup> Precinct, from where she was released with a DAT.

§ 87(2)(b) returned to the 83<sup>rd</sup> Precinct station house on December 15, 2009, at about 4:00 p.m. § 87(2)(b) told an officer identified as PO Sherlon Smikle of the 83<sup>rd</sup> Precinct that she wanted to file a complaint. PO Smikle told § 87(2)(b) that he did not know which officers were involved in this incident, that this incident "was not a serious matter," and that § 87(2)(b) could not file a complaint about this incident. § 87(2)(b) asked to speak to PO Smikle's supervisor and he did not allow her to do so. PO Smikle did not give § 87(2)(b) any paperwork to fill out; he told her to go home and call the police, but did not give her a number to call.

**Victim:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black female with brown hair and brown eyes who is 5'4" tall. § 87(2)(b) works as § 87(2)(b).

**CCRB Testimony**

§ 87(2)(b) was interviewed on December 16, 2009 (encl. 7A-7B). § 87(2)(g)

§ 87(2)(b) stated that she answered the door and opened it for PO Zito and PO Kanover. The officers did not say anything when they knocked on the door. The officers immediately "barged in," but both § 87(2)(b) and § 87(2)(b) asked the officers if they had a search warrant. The officers replied that they didn't need a search warrant as they were responding to a complaint that had been going on for no longer than a month. § 87(2)(b) corroborated the search of § 87(2)(b)'s bedroom, but stated that the officers did not go into any drawers, including those of the armoire. After § 87(2)(b) was led out of the apartment in handcuffs, Det. Barone frisked § 87(2)(b). § 87(2)(b) did not go with § 87(2)(b) to the 83<sup>rd</sup> Precinct station house on December 15, 2009.

## **NYPD Statements:**

### **Subject Officer: PO MATTHEW ZITO**

- *PO Matthew Zito is a § 87(2)(b)-old white male with brown hair and brown eyes who is 6'2" tall and weighs 240 pounds..*
- *PO Zito worked from 2:33 p.m. to 11:00 p.m. on December 11, 2009. PO Zito was assigned to buy and bust/SNEU operations, in plainclothes and working with PO Kanover in an unmarked vehicle.*

### **Memobook**

PO Zito had the following memo book entries relating to this incident (encl. 8A). At 6:45 p.m. on December 11, 2009: "At § 87(2)(b) kite location." At 7:00 p.m.: "1 under § 87(2)(b)

### **CCRB Testimony**

PO Zito was interviewed at the CCRB on March 16, 2010 (encl. 8B-8C). At about 6:45 p.m. on December 11, 2009, PO Zito and PO Kanover went to § 87(2)(b). There was an active kite at this location § 87(2)(e), § 87(2)(f)

PO Zito intended to perform a vertical patrol in order to see if there was any criminal activity going on.

When PO Zito and PO Kanover entered § 87(2)(b) they noticed an odor of marijuana. As they ascended the stairs, this odor became stronger and was the strongest in front of the § 87(2)(b) apartment, which is the top floor. Due to this smell of marijuana, PO Zito knocked on the front door of the § 87(2)(b) apartment and § 87(2)(b) opened the door. When § 87(2)(b) answered the door, PO Zito saw § 87(2)(b) behind her with a lit marijuana cigar in her hand. PO Zito knew that this was a marijuana cigar based on the odor and the way that it was hand-rolled. When § 87(2)(b) saw PO Zito at the door, she placed the cigar down on the bed.

PO Zito asked § 87(2)(b) to come over to the threshold of the door and she complied. PO Zito handcuffed § 87(2)(b) at the threshold of the door. PO Zito and PO Kanover then walked into the apartment to recover the marijuana cigar from the bed without asking for consent. PO Zito did not recall § 87(2)(b) or § 87(2)(b) saying anything about a search warrant. Neither § 87(2)(b) nor § 87(2)(b) expressed that they did not consent to this entry. Other than recovering the cigar, PO Zito did not search the apartment or see any other officer conduct a search of the apartment. PO Zito did not frisk § 87(2)(b) and did not witness a frisk or search of § 87(2)(b) or § 87(2)(b).

### **Subject Officer: DT MEGHAN BARONE**

- *Detective Meghan Barone is a § 87(2)(b)-old white female with brown hair and hazel eyes who is 4'11" tall and weighs 160 pounds.*
- *On December 11, 2009, Det. Barone worked from 2:27 p.m. to 11:00 p.m. Det. Barone was in plainclothes, working as arresting officer and in an unmarked vehicle with Sgt. Sommer.*

### **Arrest Report**

Det. Barone arrested § 87(2)(b) at 7:00 p.m. on December 11, 2009, inside of § 87(2)(b) for § 87(2)(b) (encl. 9D-9E). The arrest report narrative reads: "§ 87(2)(a) 160.50

### **CCRB Testimony**

Det. Barone was interviewed at the CCRB on March 16, 2010 (encl. 9K-9L). At about 7:00 p.m. on December 11, 2009, PO Zito informed Det. Barone and Sgt. Sommer over the radio that he had one under arrest at § 87(2)(b). When Det. Barone arrived at the location, there was a smell of marijuana and there was an extinguished, smoked marijuana cigar that Det. Barone thought was on the bed. Det. Barone did not participate in any search of the location and there was no search of the location while she was present. Det. Barone did not recall if she frisked § 87(2)(b) but if § 87(2)(b) was frisked, as the sole female officer Det. Barone would have been the officer to frisk her. Det. Barone would have frisked § 87(2)(b) if she suspected that § 87(2)(b) had a weapon, but she did not recall if she had any reason to suspect this. Det. Barone searched § 87(2)(b) who was already under arrest.

### **Subject Officer: PO LORNE KANOVER**

- *PO Lorne Kanover is a § 87(2)(b)-old white male with brown hair and brown eyes who is 5'10" tall and weighs 215 pounds.*
- *On December 11, 2009, PO. Kanover worked from 2:00 p.m. to 11:00 p.m. PO Kanover was in plainclothes, assigned to enforcement and working with PO Zito in an unmarked vehicle.*
- *It should be noted that although PO Kanover was promoted to Detective following the date of this incident, he is referred to in the course of the recommendation report by his then rank of Police Officer.*

### **CCRB Testimony**

PO Kanover was interviewed at the CCRB on March 25, 2010 (encl. 11C-11D). § 87(2)(g) he did not recall the handcuffing of § 87(2)(b).

### **Witness Officer: SGT WILLIAM SOMMER**

- *Sgt. William Sommer is a § 87(2)(b)-old white male with black hair and blue eyes who is 6'0" tall and weighs 185 pounds.*
- *On December 11, 2009, Sgt. Sommer worked from 2:25 p.m. to 11:00 p.m. Sgt. Sommer was in plainclothes and working as narcotics supervisor with Det. Barone in an unmarked auto.*

### **CCRB Testimony**

Sgt. Sommer was interviewed at the CCRB on March 31, 2010 (encl. 12D-12E). Sgt. Sommer's statement was entirely consistent with the statements of PO Zito, PO Kanover and Det. Barone.

### **Subject Officer: PO SHERLON SMIKLE**

- *PO Sherlon Smikle is a § 87(2)(b)-old black male with black hair and brown eyes who is 6'2" tall and weighs 175 pounds.*
- *On December 15, 2009, PO Smikle worked from 2:30 p.m. to 11:35 p.m. According to his memo book, he went to traffic court prior to the beginning of his tour, then he went to the precinct, where he changed into uniform and was assigned to hospitalized prisoner duty.*

### **CCRB Testimony**

PO Smikle was interviewed at the CCRB on March 16, 2010 (encl. 10D-10E). PO Smikle did not recall this incident, even after being given a synopsis, and did not recognize a photograph of § 87(2)(b). PO Smikle did not recall greeting any individuals at the precinct on December 15, 2009,

but if someone had come in to file a civilian complaint, PO Smikle would have gotten a supervisor and had them handle the complaint.

**NYPD Documents:**

**Property Voucher**

A cigar wrapper containing marijuana was vouchered by Det. Barone on December 11, 2009, as evidence in the arrest of § 87(2)(b) (encl. 15).

**Roll Call**

The 83<sup>rd</sup> precinct roll call for tour 3 on December 15, 2009, shows that PO Smikle worked from 3:00 p.m. to 11:35 p.m. as T/S operator (encl. 16A-16J).

**Arrest for Incident and Disposition**

- All criminal charges in connection with the incident have been dismissed.

**Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) had not filed a Notice of Claim with the City of New York as of March 23, 2010, with regard to this incident.

**Civilian(s) Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]

**Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (encl. 3A-3B).

**Subject Officer(s) CCRB History**

- Det. Barone has been a member of the service for seven years and there are no substantiated CCRB allegations against her (encl. 2A).
- PO Zito and PO Kanover have been members of the service for five years and there are no substantiated CCRB allegations against them (encl. 2B-2D).
- PO Smikle has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 2E).

**Conclusion**

**Identification of Subject Officers**

- As PO Zito and PO Kanover both admitted to entering § 87(2)(b)'s apartment, the entry/search allegation was pled against both officers.
- As Det. Barone was the only female officer assigned to the 83<sup>rd</sup> Precinct Narcotics module on December 11, 2009, and she admitted to possibly frisking § 87(2)(b) this allegation was pled against Det. Barone.
- As § 87(2)(b) identified PO Smikle by name, shield number and pedigree information, the refusal to process civilian complaint was pled against PO Smikle.

**Allegations Not Pled**

§ 87(2)(g)

### **Investigative Findings and Recommendations**

**Allegation A—Abuse of Authority: On December 11, 2009, PO Matthew Zito entered and searched** § 87(2)(b)

**Allegation B—Abuse of Authority: On December 11, 2009, PO Lorne Kanover entered and searched** § 87(2)(b)

It is undisputed that PO Zito and PO Kanover entered § 87(2)(b)'s apartment. § 87(2)(b) and § 87(2)(b) also stated that the officers searched § 87(2)(b)'s bedroom, looking underneath the mattress and in drawers, which both PO Zito and PO Kanover denied.

§ 87(2)(g)

Under the doctrine of exigent circumstances, courts have allowed officers to enter a residence to seize an item of contraband that could easily be destroyed, such as a marijuana cigar, if they observe this contraband from a lawful vantage point, such as a hallway outside an apartment (encl. 1A). Kamins, New York Search & Seizure, p. 4-132 (2009 ed.). As well, “if an officer recognizes the smell of marijuana emanating from a dwelling and the officer has received a report of drug activity in the premises, a warrantless entry will be valid” (encl. 1B-1C). *Ibid.*, p. 4-116 to 4-117. However, once officers have entered a residence under the doctrine of exigent circumstances, they are only allowed to examine the areas in plain-view without a search warrant and cannot conduct a full-blown search.

§ 87(2)(g)

§ 87(2)(g)

**Allegation C—Abuse of Authority: On December 11, 2009, DT Meagan Barone frisked**

§ 87(2)(b)

§ 87(2)(b) stated that she was frisked by Det. Barone after § 87(2)(b) had exited the apartment. Det. Barone stated that she would have frisked § 87(2)(b) if she suspected § 87(2)(b) of having a weapon, but she did not recall whether she frisked § 87(2)(b) or if she had any grounds to suspect that § 87(2)(b) was armed. No other officer admitted seeing Det. Barone frisk § 87(2)(b) § 87(2)(g)

**Allegation D—Abuse of Authority: On December 15, 2009, PO Sherlon Smikle did not process § 87(2)(b)'s complaint regarding officers.**

§ 87(2)(b) stated that PO Smikle refused to allow her to file a civilian complaint at the 83<sup>rd</sup> Precinct station house. § 87(2)(b) did not describe any additional officers being present. PO Smikle did not recall interacting with § 87(2)(b) and had no memo book entries relating to this incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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Team: 8

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Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date